

MINUTES
WARRICK COUNTY AREA PLAN COMMISSION
Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, October 19, 2009, 6:00 PM

MEMBERS PRESENT: Guy Gentry, President, Tony Curtis, Art Noffsinger, Brad Overton and Larry Wills.

Also present were Sherri Rector, Executive Director and Secretary, Morrie Doll, Attorney, and Sheila Lacer, Staff.

MEMBERS ABSENT: Adrienne Held and Mike Moesner.

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Larry Willis and seconded by Art Noffsinger the Minutes of the last regular meeting held September 14, 2009, were approved as circulated.

The President explained the Rules of Procedure to the audience and added that any rezoning petition receiving a recommendation this evening will be forwarded to the County Commissioners on Monday, November 9, 2009.

The President commented that the following Minor Subdivisions will be heard together since they are in the same vicinity but they will be voted on separately. He explained that Minor Subdivisions are usually handled by the Executive Director unless there is some remonstrance. He stated the procedure is then to have the Plat Review Committee meet with them and then if nothing can be ironed out then it is brought to the Board.

MINOR SUBDIVISIONS:

MS-09-32 – Waterworks No. 1 Minor Subdivision by the Town of Chandler. 7.73 acres located on the E side of Pollack Ave (S 600) approximately 0' S of the intersection formed by Pollack Ave. & SR 662, Ohio Twp.

MS-09-33 – Waterworks No 2 Minor Subdivision by Mulzer Crushed Stone, Inc. 10.43 acres located on the S side of Pollack Ave. (S 600) approximately 450' E of the intersection formed by Pollack Ave & Powers Dr., Ohio Twp.

Anthony Long, Attorney, was present and representing the Town of Chandler for Waterworks #1. Mike Schopmeyer, Attorney, was present and representing Mulzer Crushed Stone, Inc. for Waterworks #2. Attorney Long stated Steve Sherwood is their engineer who has submitted....

The President called for a staff report.

Mrs. Rector stated per the Subdivision Control Ordinance, notice of a Minor Subdivision must be sent to the adjacent property owners and they have ten days to file an appeal of the minor. She stated if an appeal is filed then the Site Review Committee meets again to try to solve the issues and if they can't then she can, as Executive Director, either approve it, deny it or forward it to the Plan Commission. She stated they did meet with the remonstrators and their concerns were drainage. She stated this was filed by Mike Feldbusch and there was a petition signed by others. She stated at the Site Review meeting, Mr. Baxter, the County Surveyor, asked for drainage calculations to be submitted so he could determine if drainage plans needed to be submitted. She stated they did submit drainage calculations and it was the opinion of the Drainage Board and the County Surveyor and the County Engineer that due to what is proposed on the property (mainly Waterworks No. 2 – a water treatment facility that will be smaller than the one that is presently there) it will not affect the area any more than it is affected now. Mrs. Rector added that Mulzer's and the Town of Chandler has upon themselves agreed to help any drainage they have in that area now but what they are doing will not cause any additional problems. She stated the vote of the Drainage Board and the County Surveyor was that no drainage plans were required. She stated there are a couple of issues that the County Engineer wants to review and so it was conditioned upon his review and sign off. She stated as soon as he signs off no drainage plans are required then it could be a Minor Subdivision according to the Ordinance.

Ascertaining the applicant had nothing to add, the President called for remonstrators.

Monte Williams stated he owned the property that Chandler took by imminent domain for the purpose of using it for an improvement of their waterworks. He stated now Chandler is not commanded to abide by the zoning regulations and so if they want to use it for a waterworks, why do they need a Minor Subdivision.

Mrs. Rector stated some of the property is owned by Mulzer's and they are not exempt from the Subdivision Ordinance.

Mr. Williams asked if they are exempt from using the property for another purpose.

Mrs. Rector stated the Town is. She stated the Town as a utility is exempt but Mulzer's is not.

Mr. Williams stated he isn't referring to Mulzer's, he is referring to ..uh..

Mrs. Rector stated Mulzer's is required to divide the property per the Subdivision Ordinance. She stated Chandler is exempt as a utility for building the water treatment plant.

Mr. Williams stated he is referring to Chandler's request.

Mrs. Rector clarified he is talking about the Minor Subdivision to the north. She stated in the Drainage Board meeting that was not even discussed and it was never brought up by the remonstrators as having any drainage issues. She stated Mr. Feldbush did sign an appeal for both of them and that is why they are both on this agenda. She further explained that the Town is subdividing the property and they have to meet the Subdivision Control Ordinance requirements but they don't have to receive permits for any utility construction or use.

Mr. Williams stated then they don't plan to use it for waterworks improvement.

Mrs. Rector asked if he is talking about #1, the one on the highway and Pollack Avenue.

Mr. Williams stated that is right.

Mrs. Rector stated they have a rezoning petition on the agenda for a portion of that property following these Minor Subdivisions.

After ascertaining there were no other remonstrators Mrs. Rector stated she needs a direction from the Board to sign off on the Minor Subdivisions as soon as the County Surveyor signs off that no drainage plans are required.

Art Noffsinger made a motion to direct the Executive Director to sign the Waterworks #1 Minor Subdivision once the County Surveyor signs off that no drainage plans are required. The motion was seconded by Tony Curtis.

Larry Willis questioned what the County Engineer wanted to review.

Mrs. Rector stated Aigner Engineering reviewed the drainage calculations and they had four issues/questions they had in review of the calculations. She stated most of them had been answered but a couple of them were not and so the engineers for the Town are working with the County Engineer.

Art Noffsinger stated essentially what they had was that even though no plans for drainage are going to be required, Chandler has decided to go ahead and improve the drainage situation they had there and so they put it in the motion that they would move forward with this and they would work with the County Engineer on the additional things they plan to do.

Mrs. Rector stated it was work within the County road right of way she believes and that is what his questions were.

Mr. Noffsinger stated that is correct.

The President stated there is a motion and a second on the floor. The motion unanimously carried.

The President called for a motion for Waterworks #2.

Tony Curtis made a motion made a motion to direct the Executive Director to sign the Waterworks #2 Minor Subdivision once the County Surveyor signs off that no drainage plans are required. The motion was seconded by Art Noffsinger and unanimously carried.

REZONING PETITIONS:

PC-R-09-06 – Petition of the Town of Chandler by S. Anthony Long, Attorney OWNER OF RECORD: Same To rezone 5.2003 acres located on the E side of Pollack Ave. (S 600), a distance of 0 feet S of the corner formed by the intersection formed by SR 662 and Pollack Ave. (S 600) Ohio Twp. From “A” Agricultural Zoning District to “C-4” General Commercial Zoning District. Complete legal on file. *Advertised in the Boonville Standard September 3, 2009. Con’ from September 14, 2009 meeting.*

Anthony Long, Attorney, was present and representing the Town of Chandler. He stated the Town is the owner of record of the property and then he introduced Attorney Mike Schopmeyer who is representing Mulzer Crushed Stone, Inc., who will be the recipient of this property and has more to say about it than he.

The President called for a staff report.

Mrs. Rector said they have all the return receipts from certified mail of notice of this meeting. She stated this was continued from last month due to notice not being sent to Monte Williams Trust and so he was re-noticed. She stated the property is located on the East side of Pollack Ave 0’ S of the corner formed by SR 662 and Pollack Ave. She stated the petition is to rezone 5.2 acres from “A” Agriculture to “C-4” General Commercial. Mrs. Rector stated the Comprehensive Plan projects the area to be moderate to high density residential and the existing land use is vacant. She explained the property to the South and East is “M-2” – Mulzers; West is “A” and “R-1A” with vacant land and residences and a small amount of “C-3” and “C-4” – trucking company and to the North is “R-1” – Byerson Heights Subdivision. She stated there is no flood plain on the property and the access is Pollack Avenue and SR 662. She stated the applicant states on the application “the proposed land use will be a baseball field (which would be allowed in a “C-3” or “C-4” with a Special Use) or potential other “C-4” uses not known at this time.” She added there is a letter of remonstrance that has been submitted by Robert H. Brown and it is included in their packets. She stated there is no Use and Development Commitment so any use allowed in a “C-4” zoning could go there and the application is in order.

Attorney Schopmeyer stated he is here today on behalf of Mulzer Crushed Stone who was brought into this transaction not all that different than Mr. Williams was a few years ago in that Chandler Water determined that the better location after some further testing for their facility was on their property (Waterworks #2). He stated it was determined that for the customers of the utility this land to the south was a better location and they then recently approached Mulzer’s to work out an exchange. He stated that any utility, like the government, has the power of eminent domain. He stated so in the process it is best to work out an agreement on the parties and that was done for the exchange of properties. He stated that is what has brought them here today. Attorney Schopmeyer stated the question before them is why Mulzer’s would seek “C-4” zoning and he thinks the zoning map speaks for itself. He stated Mulzer’s property currently adjoining this (where the ball fields are) is zoned “M-2” and the property just to the west of that and south of the highway (Williams Trucking) is zoned “C-3” and “C-4”. He stated with that said they put in the agreement with the utility that the deal would be able to go forward with the exchange but the property would need to be zoned. He stated they didn’t seek an “M” zoning because of a buffer with the “C” that is already there. He stated there is other “C-4” zoning on the other side of the highway and they recognize that Byerson Heights is across the street. He stated he has tried to call Mr. Brown over the weekend but he can’t find a phone number. He stated he has made his phone number available for them to call. He stated he did speak to one of the neighbors today and explained to him the intention is to have the same recreational uses that are out there now. Attorney Schopmeyer stated what is critical to the property is the access to the highway which is used some now but it is not the primary entrance but there is an entrance there. He stated that really speaks to the reason for the petition and they are here unwillingly but none the less when you are in the midst of a deal you have to make sure the zoning is right and so they filed everything at one time with the help of Mr. Sherwood.

Attorney Schopmeyer stated he will be happy to answer any questions they may have. He again stated the intent is to continue this recreational use. He stated it might be added parking lots initially for the ball fields. He stated there is no intention for this to be anything but the buffer that it has been. He stated when the Mulzer property was rezoned ten years ago and they said the intentions were for this to be a recreational buffer and that it their intentions for this property. He stated they might let the league pursue the Special Use but they do understand there is a Special Use requirement.

The President called for questions from the Board.

Larry Willis asked if they have any intentions of removing the existing fields and building new ones or are they just adding to the complex.

Attorney Schopmeyer stated he understands the intention is to either add a field or add parking but to leave the existing fields.

Ascertaining there were no other questions from the Board the President called for remonstrators.

Robert Brown stated he lives directly across the street from this property and he is the one who wrote the letter. He stated this is the first he heard that a proposed ball field is going to be put there. He stated prior to that it has just been rumor. He stated his concern is the noise level directly across the street from his property and the lighting. He stated for his property particularly the bedrooms and the living area is on the south side of the house which will face the proposed ball park. He stated the ball park could have the dugouts and everything within two hundred feet of his back door. Mr. Brown stated there is no buffer, fence or barrier that can be established to create a sound level that will be desirable for them. He added the lighting will light up his back yard like an operating room and to him it is unacceptable. He stated the reason nothing has been built there before, especially residential, is because no one wants to be next to a ball field. He stated he doesn't mind where it is right now because it is over 400 feet from his property and there are trees that create a buffer. He stated if it were directly behind his house the noise level, the lighting and the traffic will take away his property values and he would never have purchased the property four years ago if the structure had been there then. He stated the comfort level of their back yard is going to go to hell and he is against this.

Monte Williams stated they said they just found out that they had a better location for the water plant. He stated they knew years ago (2001) that the location they had near the road was not a good place to put a water well because the efficiency of the aquifer diminishes as it goes from the river to the highway. He stated on the north side of SR 662 they can't drill a well because it will be a dry hole. Mr. Williams stated the availability of the water diminishes as you go forward. He stated Mulzer asked him to sell them this property years ago and so this is not a brand new issue and he would just like that to be for the record. Mr. Williams stated he should have brought this up when they initially proposed it but he didn't have good legal advice.

Attorney Long stated he knows a few technical things about this project and the water does not come from the river; the water comes from the north to the south as a subterranean water flow and the reason they(Chandler) made the decision ...they could drill all the way up to the road and there wouldn't be a problem but they are tapping the same flow of water that they have five or six wells south of this subject property. He stated once they got into this property and actually acquired title it was decided they needed to drill their wells to the west of their existing plant and they would tap the flow of water coming from the north to the south that would not be interfering with the present supply. He stated the decision to relocate the plant from the subject property over to the one they are acquiring from Mulzer was the simple fact they got more ground and would give them surplus ground over where they were and that was the basis of the exchange. He stated it was a decision for a better, longer term, higher quality supply of water that in no way is affected by the river but it is a subterranean flow of water that comes from many miles to the north. He again stated the reason for the exchange was a better supply of water and they are acquiring four more acres of ground and so they went to Mulzers' and negotiated the exchange.

Attorney Schopmeyer stated in regards to Mr. Brown's comments about the neighbors and the concerns on the lighting, they will certainly work with the neighborhood in regards to a buffer and working with them on the lighting to assure that it doesn't become a nuisance as indicated by Mr. Brown and added this is the first they have heard of the concerns. He stated as to the noise, this will be the third complex he has worked with as practicing as the attorney and he is always startled that the noise of children is being a nuisance to residential neighborhoods. He stated where he came from the noise of children playing is not a nuisance; in fact it is what most of us hope exists in our neighborhood. He stated so he can't speak to the noise – people cheering their sons and daughters playing baseball and so forth. Attorney Schopmeyer stated he can't speak for the lighting but he knows that Mr. Mulzer will work with them to make sure that the lighting creates the least nuisance or diminishment in their property values. He stated there is lighting there now and it probably won't be that much different but they will work with them in planting trees and so on. He added that most of the Board knows that the Mulzers have been good neighbors all over the river valley. He stated the intention is basically the status quo and he will be happy to answer any more questions they have and he would be happy to meet with Mr. Brown and his neighbors as well.

Larry Willis commented that he doesn't think the neighbors are complaining so much about the noise of the children but instead the noise of the loudspeakers. He stated sometimes people rattle on and on over the speakers and so that may be something they need to think about when they come looking for their Special Use.

Attorney Schopmeyer stated that could be dealt with in how they place the speakers or perhaps not have any speakers. He stated that area does get closer to the Byerson neighborhood and maybe that is an area where they just limit it. He stated he would personally just have a scoreboard and let the parents and the umpires take care of the game. He stated that is a good point.

Brad Overton asked how far the field would have to be from the road.

Mrs. Rector stated a commercial zoning requires a five foot yard.

Attorney Schopmeyer assured the Board that it will be much further from the road than that. He stated again, they won't have any issues with sitting down with the neighbors and seeing if they can work out a middle ground on that issue.

Guy Gentry asked if the buildings that are shown in the aerials still there.

Attorney Long stated the buildings have been removed.

Mrs. Rector stated they will have to obtain a Special Use Approval from the Board of Zoning Appeals for the ball fields. She explained they can't approve a rezoning with conditions unless there is a Use and Development Commitment and this one does not have that. She stated the Board of Zoning Appeals can put conditions on the Special Use Approval regarding the lighting and the noise. She stated notice to the adjacent property owners will have to be sent out for that meeting as well.

Attorney Schopmeyer stated he would commit to them here on the record that they will meet with the adjacent property owners prior to that Special Use being filed.

Ascertaining there were no other questions from the Board and being no other remonstrators present, the President called for a motion.

Art Noffsinger made a motion to recommend approval to the County Commissioners of PC-R-09-06 from "A" Agriculture to "C-4" General Commercial. The motion was seconded by Larry Willis. Brad Overton voted against the motion and all other members voted for the motion.

The petitioners were informed this rezoning would be forwarded with a recommendation of approval to the County Commissioners on Monday, November 9, 2009, at 400 pm in the Commissioners Meeting

PLAT VACATION:

PV-09-08 – Vacation of Lots 10,11,12,14,15,16 & 17 Weyerbachers 2nd Subdivision as recorded in Plat Book #4 Page # 225 in the Office of the Recorder of Warrick County, Indiana by Jess L. Pitts & Connie E. Pitts. 4.4481 acres located on the E side of Parklane Drive approximately 0' E of the intersection formed by Parklane Dr. & Gough Ave. Boon Twp. *complete legal on file. Advertised in the Boonville Standard October 8, 2009.*

Jess and Connie Pitts were present.

The President called for a staff report.

Mrs. Rector explained they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated the vacation of a plat is set up by State Statute and they have followed those requirements. She stated they have appeared before the County Commissioners and had the right of way for Branson Lane vacated; however, the Commissioners did so with the condition that the plat also be vacated by the Plan Commission. Mrs. Rector stated they own lots 10,11,12,14,15,16 & 17 and they want to vacate the right of way and all of the lots so they can have one lot for assessment value. She stated they will still have their frontage on Parklane Drive. She stated the vacation is in order. She added they also have a quit claim deed from the Weyerbacher heirs for the right of way since the developer of the property was the Weyerbachers.

Larry Willis asked about Mary Metzger's property. He asked if she comes in off Branson Lane.

Mrs. Rector stated she accesses Parklane Drive. She added that Mrs. Metzger also signed the right of way vacation.

Mrs. Pitts stated for the record that Mrs. Metzger signed the vacation of the right of way and she is going to get her portion of the right of way.

Ascertaining there were no other questions from the Board, the President called for a motion.

Brad Overton made a motion to approve the vacation of Lots 10,11,12,14,15, 16 & 17 of Weyerbachers 2nd Subdivision. The motion was seconded by Tony Curtis and unanimously carried.

Mrs. Rector stated they will record this vacation and cross reference it to the plat.

Mrs. Pitts asked if she needed a new deed to which she was advised she would need to do so since her deed refers to lots and the lots are now gone.

Attorney Doll advised she should record the quit claim deed for the right of way first and then the plat vacation and right of way vacation should be recorded and then they can record a corrected deed.

OTHER BUSINESS:

REDEVELOPMENT COMMISSION RESOLUTION 2009-7 – Amended and restated declaring resolution of the Warrick County Redevelopment Commission amending the Epworth Road Corridor Economic Development Plan to add a project.

Attorney Tom Kimpel and Larry Taylor, Executive Director, Economic Development Commission were present.

Attorney Kimpel stated there are here this evening to obtain the Board's approval of the Redevelopment Commission's declaring resolution amending the development plan for the Epworth Road TIF Corridor to add a new project to the TIF area. He stated the project is Exhibit A to the resolution. He stated it is simply to add an east/west road and infrastructure north of SR 66 to open up the area to more development. He stated they are present this evening because the State Statue has changed and so whenever a Redevelopment Commission adds a new project to the Economic Development Plan they are to come to the Area Plan Commission for them to look at the project and see if it is in compliance with the County's Comprehensive Plan. He stated after they meet with the Plan Commission they go to the County Commissioners for their review and approval. He stated that is why they are present this evening. He stated they mailed this out in advance of this meeting in order for the Board members to see what they were planning and he will be happy to answer any questions they may have.

Mrs. Rector stated she sent all the members a email and also had Attorney Doll review it.

The President called for questions from the Board.

Larry Willis asked if the road will run east and west from Libbert Road to Epworth Road.

Attorney Kimpel stated probably all the way the Vanderburgh County line.

Larry Willis asked if the plan on using Stahl Road.

Attorney Kimpel stated the engineers are looking at that and they don't know the exact location. He stated they are being as specific as they can but they want to be general in nature. He stated he thinks they want to incorporate and use as many existing roads as possible and he thinks parts of Stahl Road are definitely being looked at.

Larry Willis stated in the meetings they had for long range planning they tried to have roads line up with Stahl Road as they came across the vacant property.

Attorney Kimpel stated he thinks as they get more formalized road plans they will be happy to share them and work with their department.

Guy Gentry stated Arbor Pointe Subdivision stubbed out a Stahl Road.

Mrs. Rector stated they did because of the Thoroughfare Plan.

Attorney Doll asked if the Thoroughfare Plan calls for Vann Road to go all the way through to which Mr. Gentry stated it does but it also calls for another frontage road.

Attorney Kimpel stated this will be a frontage road for SR 66 because it is limited access.

Brad Overton stated this is all going to come before the County Council for funding and he is wondering if he has any conflict.

Attorney Doll stated he doesn't see any conflict because he can agree with the concept but not agree to fund it.

Ascertaining there were no other questions from the Board, the President called for a motion.

Larry Willis made a motion to approve the resolution. The motion was seconded by Tony Curtis.

Guy Gentry asked if they did make the amendment of removing the medical district because it is not a zoning thing . . .

Attorney Kimpel stated it says they met again last week to restate the resolution for the purpose of removing any reference to medical district.

The President stated there is a motion and a second on the floor. Art Noffsinger abstained and all other members voted for the motion.

ATTORNEY BUSINESS:

None

EXECUTIVE DIRECTOR BUSINESS:

Discussion of Minor Subdivision Requirements

Mrs. Rector stated in the Subdivision Control Ordinance under the Minor Subdivision Approval it says you "shall" have the following certifications (septic, sewer, water, wells or cisterns) and they are for building sites. She stated it is becoming more common for people to not want a soil test and have a building site and she wants to know since it says you "shall" have these certifications does that mean they all have to be buildings sites. She stated if they don't have a soil test and it isn't a building site then when they sell the parcel they have to come back and amend the minor subdivision to make a building site. She stated the person doing the minor doesn't care until they sell it. She stated she told some of the engineers that she was going to bring this before the Board this evening for determination as to whether they can put "Not a building site" on the minor and she sign off on it or should be do it by the ordinance.

Attorney Doll stated the ordinance ties their hands because it says "shall". He stated it presumes that every minor plat is going to have a home built on it. He stated that is not always true, some divisions of property is for recreational lands and they never intend to build a residence on them. He stated the dilemma the office is having is when you come in with a minor subdivision plat and it is being presented as recreational property, do they have to comply with the County ordinance requirements that is thinking it is going to be a building site. Attorney Doll stated he told Mrs. Rector that unless the Board exempts her from it, and he isn't positive they have the authority to do that, she has to enforce the ordinance as it is written. He stated Mrs. Rector is correct in saying they could mark the parcels "not a building site" and contend that common sense tells you they don't have to have these other tests certified to for the property. He stated then if they are sold and down the road someone comes in and wants to get a building permit to build a house it is up to them to come into compliance versus the person who brought the minor plat in initially.

Art Noffsinger stated that is a problem waiting to happen.

Attorney Doll stated he understands that and that is probably why the ordinance is written the way it is so as to say in every single case whether it is going to be a recreational lot or not they have to have these tests if you are doing a minor.

Guy Gentry stated if it for recreational purpose and it doesn't have the tests, who cares.

Attorney Doll stated that is the other side of the coin.

Mrs. Rector stated she can see if Farmer John has 100 acres and he wants to give his two sons and his daughter 5 acres each and he wants to keep the rest of the property as agricultural the Subdivision Ordinance does say the remainder can say “agricultural purposes only” and that would be exempt. She stated the other sites would have to be tested because they are newly created parcels.

Art Noffsinger they might not be building a home on the property, it might be farm ground for the children. He stated he thinks this is something they really need to look at and come up with a couple of different ways that this would work.

Attorney Doll stated if they want to, the County Ordinance could be amended that simply says, if the minor subdivision is marked “not a building site” they are exempted from the test and then down the road if somebody buys it, they are buying fully aware that it is not a building site, it says so on the plat. He stated if they want to make it a building site later then it is up to the current owner of the property to come into compliance if they choose to do so.

Art Noffsinger stated he supports that.

Attorney Doll stated in the meanwhile the office has the responsibility to read and follow the ordinance and the ordinance says “shall”.

Guy Gentry asked what they would have to do if it stated on the plat “not a building site” and then they want to make it a building site.

Mrs. Rector stated they have to re-do the plat to make it a building site. She stated they can’t just get a soil test, they have to amend the plat because it has been recorded as “not a building site”. Mrs. Rector stated they try to tell people during the Site Reviews they should go ahead and spend the money for the soil tests because then it is an approved building site and the property is worth more money than not a building site.

Art Noffsinger stated generally speaking the people who are subdividing it the first time really don’t care.

Mrs. Rector stated the way it has always been explained to her as to why they have it in the ordinance is that it is the Plan Commission’s job to insure the health, safety and welfare of the community and they are guaranteeing the purchaser that it is an approved building site. She stated the people selling this property is like a business man who is selling a product and they should be guaranteeing that purchaser that they can come in tomorrow and get a permit to build a home. She stated that is why they have the regulations in there but she can also see if you have thousands of acres of coal mine ground that you could want to sell big chunks of recreational area. She stated to be honest, they did try to file a minor subdivision on some coal mine property that was 75 acres in three parcels but it had already been divided once and so they have to file a major.

Attorney Doll stated originally it was over 1000 acres.

Mrs. Rector stated they were trying to go around the major subdivision requirements and she told them they had to do a major and so instead of it being three recreational parcels it now has several building lots and she feels it would have ended up that way later but they didn’t want to be the original ones that has to put up the cost of doing it.

Art Noffsinger stated the person selling the property could find himself in the position where he is going to have to do it anyhow. He stated any property he would purchase he would do a feasibility study on and part of that study is can I build on that lot and when it comes to purchase a lot when he see there is no way of knowing whether or not he can actually use it then he would put it back on the owner to go through and pay for that study.

Attorney Doll stated it makes the property more valuable; it has a higher market value if it is fully buildable, even if you are buying it as a recreational property it is worth more in the market place.

Art Noffsinger asked if it the Plan Commission’s job to make someone’s property more valuable.

Attorney Doll stated it is the protection of the general public aspect that Mrs. Rector mentioned. He stated the assurance is that if someone in Warrick County buys a parcel of property that has been properly divided then it is completely in compliance with County ordinances and you could walk in and get a

building permit for your home after complying with application process. He stated that is the purpose of the ordinance, it is not to make the seller's property more valuable but to protect an unknowing buyer. He stated even though it may say on the plat that it is not a building site the buyer may not understand that and then they come in to get a permit and they have to correct the problem.

Mrs. Rector stated she just has to get the ordinance straightened out but they would not believe how many people never even see the subdivision plat, they just buy the property and the deed just says parcel blank of the blank minor subdivision.

Guy Gentry stated he thinks they are protected if they have not a building site on there and that is a civil thing between them and the buyer at that point. He asked which side they want to lean on.

Attorney Doll stated it is a policy decision that the Commissioners ultimately have to make.

The President asked for comments from the audience.

William Bivins, PE, LS, ACCU Survey stated he has two minor subdivisions pending right now and both of them have no building sites. He stated one of them is for Alcoa who is giving additional land to a church in Yankeetown. He stated they are not interested in paying \$250 for a soil test on the remaining property. He stated he has another one where a farmer's field was kind of chopped up and he wants to do some swapping with a neighbor so he can have a better field. He added they are not interested in a building site either.

Mrs. Rector stated they know that Alcoa is giving property to the church and they are not making a building site but the ordinance doesn't distinguish between one or the other. She stated they need to do an amendment because her problem isn't what Mr. Bivins is talking about it is with people trying to circumvent the Subdivision Control Ordinance.

Guy Gentry stated if they do follow it then those two do have to comply.

Attorney Doll stated a minor subdivision is where you subdivide no more than three lots from an original parcel within one year. He stated so you can't do one and then a few months later do another, although that has been tried. He stated what Mrs. Rector is talking about is not only do you have to do the soil tests on the new lots but on the remaining property as well, even if it is a farm field (or Alcoa property). He stated that can be addressed in the ordinance even if they don't want to address the other issue of recreational property. He stated they should at least exempt unimproved ground being retained by the original applicant from the soil testing requirement.

Art Noffsinger asked how long it will take to get this resolved.

Mrs. Rector stated it would be as fast as she could type up a new ordinance and bring it to the Board next month and then to the Commissioners.

Attorney Doll stated this Board needs to decide how they want to fix it so when she types up the ordinance they are getting what they want.

Greg Kissel, LS, Kuester Engineering, stated over half of the minor subdivisions he does in Warrick County involve lots that have high ground and they want to separate it from the low ground and they don't want to put a building down in the low ground. He stated by what they are saying now they are going to have to put a test on that bottom lot where they have no intention of building. He stated there are many pieces of property that not building sites and it is just what you see. He stated there are also estates or where people go into a nursing home and they just want to divide up the property between her heirs. He stated they don't know if or when anyone will build there, they just want financing to pay the nursing home bills. He stated there are many examples that he could state and this is a pretty big deal.

Guy Gentry stated on the flip side of the coin this will give them more business but it will cost the owners more because they have to refile it because it says not a building site.

Greg Kissel stated it isn't that much for his office because the field work has already been done and so it is just paper work and they change the certifications.

Bill Bivins stated the statement for the septic sites has to be on the plats and so they say parcel one has an existing system and parcel three is not an approved building site. He stated that is how he has done it in

the past. He stated the statement has to be on the plat but it doesn't say you have to have a soil test on every parcel.

Mrs. Rector stated the ordinance states the certifications must be on the plat and must be signed. She stated that is why she is bring it to the Board because it needs clearing up because there are too many coming in now and the people are having to redo them. She stated whether the soil test are on there or not doesn't make the work for the office any different.

Bill Bivins stated in the past they have signed off on them that way and he has two pending.

Mrs. Rector stated this has become a real issue and so she wants it cleared up.

Guy Gentry stated he thinks the biggest thing is when they have thousands of acres being divided into seventy five lots, which would be a major, but not wanting to do the soil test.

Mrs. Rector stated there are some estates that are auctioned off and they don't have a clue as to what the purchaser wants to do with the property. She stated her question is to they have to comply or not or do they want her to change the ordinance.

Attorney Doll stated that you could have a minor that could have some building sites and some non building sites and on the ones that were building sites the certification would have to be there and on the non building sites they would not.

Mrs. Rector stated the ordinance says the application shall have all this and it says the following certifications "must" appear on the plat. She stated they could even add "as to proposed building sites" and then if they say non building sites then they are covered.

Attorney Doll stated he agrees.

Art Noffsinger asked if that solves everything.

Attorney Doll stated that would solve . . .

Art Noffsinger said except for going back to the original building structure and they would have to go back amend that statement as well.

Attorney Doll stated no really. He stated it seems to him that if you have a farm field and you are making a minor out of it and Mr. Bivins stamps the original field as a non building site you have fixed the problem.

Art Noffsinger stated if they have a house on the 100 acres and want to give off something else...

Attorney Doll stated that would be exempt.

Mrs. Rector stated they would put proposed or new building sites.

Art Noffsinger stated that would take care of that problem.

Attorney Doll stated that would allow Mr. Bivins to mark "not a building site" on one or two of the parcels and not have to have the certification as to those particular lots.

Mrs. Rector stated changing the ordinance will take a couple of months and asked about the ones in the office now.

Attorney Doll stated they could fall under the new ordinance.

Mrs. Rector asked if they have to wait until the new ordinance or can this Board....

Attorney Doll stated he doesn't think this Board can do it but ..

Larry Willis stated it is a Commissioners ordinance.

Attorney Doll stated he thinks they are stuck until they get the new ordinance passed.

Bill Bivins stated he is getting a call everyday wanting to know why they aren't recorded.

Greg Kissel stated it has been done in the past..

Attorney Doll stated he can't advise the Board to violate the ordinance.

Mrs. Rector asked if the Commissioners could grant a Variance of the Subdivision Ordinance at their meeting next Monday. She stated then she could record these two and then prepare the ordinance.

Attorney Doll stated they could.

Art Noffsinger asked if she will have the ordinance prepared and ready on Monday.

Mrs. Rector stated she can have the ordinance typed but it has to be advertised but she can bring it to the meeting on Monday to show you what they are going to do.

Art Noffsinger stated he would like to see the ordinance in writing to see they are moving forward and it would be a lot easier for them as Commissioners to say it is okay because they know they are going down this road.

Mrs. Rector stated she will have it done for the meeting.

Larry Willis made a motion to amend the ordinance and to create a Variance for the two pending minors in the office. The motion was seconded by Tony Curtis and unanimously carried.

GOING GREEN – American Structurepoint, Inc., Shane E. Burkhardt, AICP, Director of Planning Services

Mrs. Rector stated she and Mr. Noffsinger went to a workshop at the AIC Conference regarding the pros and cons of wind turbine farms. She stated the workshop was very interesting and she didn't realize the impact they have on the County roads and the surrounding areas. She stated she also learned one of the main issues is to address it in the zoning ordinance so you can have public hearings and get notice out to the adjacent property owners. She stated she will make them copies of the forms she got there. She stated the Commissioners should get the roads bonded because she never knew how big and heavy the equipment was and also the decommissioning of them.

Art Noffsinger stated one other thing on that issue was the tax revenue because in the near future they are going to be exempt. He stated after theses come into play you will not benefit financially from the equipment or towers and most of that electricity is being shipped to other states so you won't benefit off the sale of the electric either. He stated one of the places in Indiana actually ships power to California.

Attorney Doll stated in today's edition of *The Wall Street Journal* is a half page article about wind turbines. He stated they use Iowa as an example and they indicate that Iowa is the model in the nation for wind generated electricity. He stated it is actually the second largest generator of wind energy in the United States. He stated the system of laws that Iowa has started using to encourage small residential wind turbine use began in 1978 and today that has born fruit. He stated originally they had a mandate that required a certain percentage of power in Iowa to be generated by wind turbines and it has so exceeded the mandate they have now repealed it. He stated the article indicates that presently for each 1000 megawatts in Iowa they receive \$6,000,000 in property taxes in the Counties where these are located and they are creating 600 full time equivalent jobs on site and 1100 indirect manufacturing and logistical support jobs. He stated that is for every 1000 megawatts generated and they generate over 3000 megawatts. He stated it is a very interesting article, whether you are for wind turbines or not.

Mrs. Rector introduced Shane E. Burkhardt and stated she met with him and thought it would be interesting for him to come before the Board since they don't have anything in the ordinance regarding green alternatives. She stated they have done presentations to other Counties and has helping with their ordinances.

Mr. Burkhardt stated what he really wanted to talk about was a little bit of the trends for wind energy and why, from a standpoint of zoning, would you potentially want to be more pro-active with your zoning ordinance in dealing with this new use that is going to be on the horizon. He stated he wants to talk a little bit about the systems that are out there, predominantly for this area of the state and what they are going to be dealing with compared to other areas of the State. He stated he also will talk about how they can potentially re-tool the zoning ordinance to account for these types of uses as they begin to pop up.

Mr. Burkhardt stated you will hear a lot of proponents of wind power talking about the benefits and he believes they were discussing an article about that just a minute ago. He stated with small wind power especially is the advantage of potentially generating your own electricity or at least lowering your electric bills. He stated that has been borne out in research as an advantage of even small wind. He stated in a state like Indiana where the laws haven't caught up with selling back to the grid even the small wind systems can really reduce utility bills from \$120 per month to \$20 per month. Mr. Burkhardt stated you are seeing about a 5-7 year return on the investment for a lot of these smaller wind systems. He stated as that technology improves and as the demand increases you will see the cost continue to drop and it is going to become a more and more popular item. He stated it is much more popular in states that allow you to sell the electricity back to the grid and if Indiana ever changes those laws you may see that demand start picking up even more.

Mr. Burkhardt stated of course right now you hear about wind power and its impact or potential impact on the environment and he thinks that has been touted a lot and he won't beat that horse anymore. He stated the turbines they are looking at today, compared to the ones 10-15 years ago, they have lots lower maintenance costs and that improves as the technology improves. He stated those are some of the things that are really happening in terms of wind.

Mr. Burkhardt stated when you talk about wind power and turbines you have examples of large wind systems that are the power generating systems that are going to sell electricity back to the grid. He stated Benton County has some of these turbines and they are owned by Indianapolis Power and Light. He stated they are working on a system right now where you can prefer, as a customer, where your power comes from. He commented these systems are very dependent upon an uninterrupted wind stream. He stated they require very flat land and very few obstructions and so places like northwest Indiana and along the western part of the state are more apt for these. He stated there is an actual wind map that is available online from the Department of Energy that you can look at and it maps the areas that are more preferential for large wind systems. He commented that Warrick County is not in one of the areas that has the type of wind that these types of farms are looking for and so the odds that in the near future they will have to deal with this type of demand will be fairly low, so he is going to talk tonight about what they will be dealing with.

Mr. Burkhardt stated people everywhere are starting to put up the smaller turbines and there are a couple of different kinds of systems out there. He stated as the technology improves they will be more cost effective to put up. He stated we had to deal with cell towers during the 1990's when that technology came in vogue, you are dealing with another land use that has potential impact in terms of visual, noise and environmental concerns and they want to talk about those and how they can account for some of those regulations in the ordinance.

Mr. Burkhardt stated the technology they are probably most accustomed to is a HAWT (horizontal-axis wind turbine) system. He stated that is the standard wind mill that you have seen over the past 100 years or so. He stated those really require pretty consistent straight line winds and stronger winds to operate. He stated to be more efficient they have to be further up in the air and those systems are typically installed 50-75 feet high for a small system. Mr. Burkhardt stated these are the most common and the most efficient and generate the most energy. He stated those aren't the only type systems out there anymore and why you will find is there is a lot of regulations bent toward these type systems but there is another one that is out there and that is a VAWT (vertical-axis wind turbine). He stated these are popping up even more and more because these systems take more advantage of a hilly area or a more concentrated area such as in towns because you get a lot of ground turbulence and the wind comes from every direction and gets reflected off buildings. He stated these systems actually work better with turbulence because they can take wind coming from pretty much any direction and rotate. Mr. Burkhardt stated they look a little different; they kind of look like a screw and they only have to be about 20-30 feet off the ground. He stated they can be mounted on buildings and other structures and so you will see them in towns.

Mrs. Rector asked how tall the turbines are to which Mr. Burkhardt stated the turbine is about 30 feet high.

Mr. Burkhardt stated these are smaller systems than the horizontal systems which are smaller turbines and small blades but they have to be mounted on a higher pole. He added regardless of what type system you have, you have different options. He stated you have direct drives which are the old ones like what used to run water pumps and then there are off-grid systems which are not connected to the grid at all and

typically charge a battery which is then used for certain purposes. He stated probably the ones you will deal with most will be the ones that are grid-tied systems, either with or without a battery and will be actually integrated into the electrical grid and when generating more power than the user is using that excess electricity is transferred to the grid. He stated the battery systems actually allow some of that energy to be stored and then used when it is not generated or when the user is pulling more power than it is generating, but right now Indiana does not allow the user to really benefit from generating that excess electricity. He added the utility company does – they get the excess electricity and will gladly distribute it and charge the same rates but right now because of utility regulations the user can't really sell electricity to the grid right now. He commented that will probably be changing in the future.

Mr. Burkhardt stated some of the reasons they may want to look at preparing regulations for these systems is of course to be prepared. He stated right now if you don't have regulations they are going to be hitting the BZA quite a bit and so that is a perfectly legitimate use of the BZA – to regulate uses that you may have not intended for. He stated since we know these are on the horizons a lot of communities such as yours (Warrick County) are beginning to put them in the land use regulations, define them as a land use and figure out how to deal with them. Mr. Burkhardt stated that also allows you to get in front of being able shape how they are best distributed and how they are best allowed for. He stated as public pressure increases you are going to see more pressure to allow these types of uses. He added some communities are getting ahead of the PR curve and wanting to show they are green friendly by allowing these types of regulations. He stated it will be up to them to gauge when they think it is most cost effective to do this.

Mr. Burkhardt then compared the heights of some of the taller wind farm tower to the height of the smaller towers compared to a flag pole. He commented that a small residential tower would be 30-60 feet high and would be a 10 kilowatt tower and would probably cut your electric bill in one third. He stated the next tower is 60-120 feet high and would probably provide 100% of your power when operating at peak efficiency.

Brad Overton commented the second one would be the one to pay you back more to which Mr. Burkhardt stated it would pay you back faster.

Mr. Overton asked which one would be more effective in a subdivision – the 30 foot one or the 60 foot one.

Mr. Burkhardt stated he needs to keep in mind that they are looking at the HAWT systems and the VAWT systems can sometimes generate a little more power and so you could have a VAWT system that could generate more than a couple of kilowatts of power that would be the same height as the smaller HAWT.

Mr. Burkhardt stated when you look at tackling the height issue of course the with the HAWT systems, the taller the tower the more efficient and more plentiful production it is going to be. He stated the VAWT systems are beginning to turn some of that on its head and they are making it more economical to put the turbines in places that you wouldn't have gotten the same kind of payback with the HAWT system. He stated the advantage the verticals have is they are a little smaller. He stated with the small systems they are not going to be tall enough to trigger FAA regulations regarding lighting requirements or painting requirements. He stated that is similar to a lot of the cell towers they are not quite tall enough but every once in awhile they will be located in a place where they are on a hill and trigger those regulations. He stated a lot of times to deal with that is you require a sign off from the FAA before they locate their tower and that way they have gone through Federal review and they don't have to worry about it.

Brad Overton asked what the lengths of the blades are on those towers.

Mr. Burkhardt stated on a typical small wind system they may be 10 feet and sometimes less. He stated the large systems are the ones that are about the length of a semi trailer.

Brad Overton stated so the 60 foot tower has 10 foot blades. He then asked what is the noise associated with them.

Mr. Burkhardt stated they will get into the noise later but he is asking very good questions. He stated the ability to get payback really does increase with height so they want to provide some balance with their

height regulations in terms of being able to find a height that is not going to create vision disturbance but also will at least provide some effectiveness for these types of systems.

Mr. Burkhardt stated you need to get a little into setbacks because obviously height is going to play into safety and setback considerations. He stated the question is how close is going to be too close to where you put these and how do you regulate them – do you require a minimum lot size or different setbacks. He stated then what do you do with abutting property owners. He stated these are some of the large issue you get into. He stated the issues dealing with concerns about radiation and things like those – there are no studies that prove these omit any type of electromagnetic radiation above and beyond any other use and so far much less than the typical power line. He stated more studies will come out in the future but right now none of that has been established. He stated typically right now most jurisdictions have settled on is the setback should be equal to the height of the tower and so a thirty foot tower would have a thirty foot setback. He stated the thought behind that is if the tower should fall it would provide a clear setback distance. Mr. Burkhardt stated a structural engineer will tell you that the taller towers will not fall straight over because they are designed to hold the full weight when they are standing erect and when they start to tilt, the structure fails and it will collapse. He stated so a 100 foot tower will not fall over like a pendulum 100 feet, it will fall part way and then collapse and so that is why most people feel if you are at least covering the height of the tower that is more than sufficient to cover any kind of potential fall zone from these. He stated most ordinance they recommend require monopole type structures because they are the strongest and they are usually the least visually intrusive and also from an attractive nuisance standpoint, they are usually the least able to be climbed. He stated they also take up the minimal amount of space compared to a lattice type structure or a tower with guy lines.

Brad Overton asked what it would do to the insurance costs on a house.

Mr. Burkhardt stated that hasn't really come up too much and he can't answer that question. He stated he would think it would be insured similar to a ham radio tower but he isn't sure.

Brad Overton stated these would be more likely to fall on someone else's house if you have it in a subdivision.

Mrs. Rector stated not if you have setbacks.

Mr. Burkhardt stated that is why setbacks are important but a lot of time they would also require a sign off from the professional engineer as part of the installation process. He stated when you think about the other uses of large towers, such as radio towers, a collapse is a very rare occurrence.

Mrs. Rector stated if you had a 60 foot high tower you wouldn't be able to get one on most subdivision lots because they aren't large enough.

Mr. Burkhardt stated that is right and that is why they also need to look at the types of systems that are going in because a VAWT system could theoretically sit on the ground and be no more than 15 feet tall and that would be more apt to be able to fit into a smaller subdivision whereas the HAWT would not.

Mr. Burkhardt stated sometimes ordinances look at establishing a limit to the number of towers that you can have and that way you are not getting too much of a cluster. He stated there are a number of ways you can do that, one is a per lot type of restriction and another one would also be requiring the setbacks also apply to distance between towers.

Guy Gentry asked what the point for an easement agreement is.

Mr. Burkhardt stated you can get into situations, especially in a subdivision where you share these facilities. He stated if you wanted to be more permissive you could allow waiving some of the setback requirements if they have a fall zone easement granted with the neighbor. He stated they haven't written any regulations that way yet but that is how some communities have handled that. He stated most communities in Indiana start out a little more conservative and want to see them in place before they become more permissive.

Mrs. Rector asked if there is any information on the odds of a tower falling.

Mr. Burkhardt stated the Department of Energy has a pretty decent website in regards to these and also the American Wind .. the AWRA is the industry website.

Guy Gentry asked if they could require the engineer to ... if you put up a tower you are going to send it to the state for their review of the structure.

Mr. Burkhardt stated typically you require that it meets all local building codes and then you also typically ...depending upon you can do it where all towers require a sign off from a structural or professional engineer or you can do it with towers over a certain height. He stated that is typically the best thing to do because then you are assured that there has been a professional sign off on how they have been constructed. He added you can also require a sign off after constructed so there has been an inspection as well. He stated in most cases the turbine manufacturers are going to require certain processes be followed because they usually provide warranties on them.

Mrs. Rector stated a lot of the issues he has talked about are in the ordinance now regarding cell towers.

Mr. Burkhardt stated in some ways you have that market incentive built in to have them constructed correctly because it will be them who suffer the economic hit when they collapse. He stated in the same way you typically want to require some type of sign off.

Mr. Burkhardt commented that color becomes important and they may deal with this in the transmission towers already. He stated oftentimes they are required to be painted sky blue or a gray or white but that is a way to decrease visual impacts and that way you don't get a purple tower because they can get painted. He stated typically the manufacturers paint the tower a gray or white but that doesn't mean they couldn't be painted another color.

Mr. Burkhardt stated just like in cell towers where you have collocation, some people have dealt with collocation of wind turbines. He stated the large turbine manufacturer you won't see do this because they need to have distance between each turbine because each turbine creates an area of turbulence that makes the turbine next to it less efficient so they need distance between them. He stated typically that is the same way you want to install these turbines because you don't want them right next to each other because if one is in the propeller wash of another turbine it will reduce its efficiency. He stated so that makes the collocation a lesser concern but if you have a subdivision that may want to allow some of its common space to have them with common ownership you may want to look at how you would potentially deal with these types of systems with a common ownership.

Mr. Burkhardt stated one thing that comes up often is visual blight. He stated that is usually an issue that wanes as people get used to seeing the technology. He stated this is very similar to the cell towers because you start to basically blot them out because they are now a part of the visual landscape. He stated the same thing with the large TV antennas on houses fifty years ago. He stated it is a concern because of its impact so you can write your ordinances to be more restrictive in terms of reducing the uses or just looking at it as something that may be more of a public concern as they are being adopted and will probably wane into the future but it is something they definitely want to consider.

Mr. Burkhardt commented that sound issues come up and first of all he did go out to Benton County and walked around some of the big turbines in operation. He stated the large ones do make a perceptible sound if it almost still and you are not moving. He stated their decibel level is approximately 50-55 decibels so if you make a step the rustle of leaves will quickly blot out those types of sounds. He stated the small wind systems have very similar types of decibel levels. He stated if there is absolutely no noise around you will hear a whooshing sound but any other noise will blot it out. He stated that falls off exponentially the distance from the tower.

Attorney Doll asked if the vertical towers are as noisy as the horizontal to which Mr. Burkhardt stated they are about the same. Mr. Burkhardt stated they can increase in sound during high wind speed but all of the newer turbines have shut offs. He commented that the ordinance should also require shut offs at higher wind speeds. He stated most of them have them because they lose their efficiency at the higher wind speeds and it does become a safety concern.

Attorney Doll asked what wind speed to which Mr. Burkhardt it is pretty much over 85 miles per hour they will disengage. Mr. Burkhardt stated all of the ones on the market now are pretty much made to withstand winds of 130 mph which is an F-1 tornado.

Larry Willis stated so what he is saying is they if you get an 85 mph wind speed you lock the propeller in place or let it free wheel.

Mr. Burkhardt stated two things happen; first it disconnects from the grid and the second thing that happens is it basically stops spinning because of the wind speed. He stated he isn't a physicist but it has something to do with aerodynamics.

Attorney Doll stated the foil fails.

Mr. Burkhardt stated they usually put in the ordinance they have to cut off at 85mph. He stated the industry says that isn't necessary but it is easy to require it. He stated most utilities will require that as well because they want to protect their grid and so they usually have a lot of regulations on top of theirs (County) when they are going to be tying into the grid.

Mr. Burkhardt stated typically the setbacks, especially if they establish a setback approximately the height of the pole, in most cases that will be sufficient in terms of noise abatement. He stated by the time you reach the end of that setback the noise is going to be so low that the neighbor is not going to be able to perceive it unless there is absolutely no noise to mask it but it won't penetrate the walls of the house. He stated some ordinances do deal with decibel levels and that gets a little into performance based zoning and that is harder to enforce and you would get into the issues of having someone certified to be able to do that.

Guy Gentry asked what kind of sound is it to which Mr. Burkhardt stated it is low frequency whooshing sound. Mr. Gentry stated the backup alarms on school buses are 95 decibels and that far exceeds the noise level of these. Discussion ensued over the decibel chart with it being said something 100 decibels versus something that is 55 decibels is not twice as loud it is ten times as loud. Mr. Burkhardt stated falling leaves are around 10-20 decibels and a whisper is 20-30 decibels and your ambient home noise is 50 decibels. Mr. Burkhardt stated the noise of the turbine is around 55 decibels and that is noise movement of the air moving around the propeller.

Larry Willis asked if there is any noise from the generator to which Mr. Burkhardt stated they have become extremely quiet but on the large systems some people say they can hear a low frequency groan but he couldn't hear it when he visited the turbines in Benton County.

Larry Willis asked what kind of failure rate they have with the bearing in the generator shaft itself because it will need maintenance and will need to bring in equipment in for the maintenance.

Mr. Burkhardt stated you would have to ask an industry rep to get into exactly how often they need to be maintained. He stated one jurisdiction they wrote an ordinance for required there be a maintenance agreement in place and often times those are the cases because that is where they (the companies) make most of their money. He stated it is his understanding these systems has a 20-30 year lifespan.

Mr. Burkhardt there have been very few studies done on property values but some feel there is an increase in values because it is an amenity people want. He stated another issue in dealing with the taller towers, especially with the neighbors, is shadow flicker. He stated it is not as much of an issue with these types of systems as opposed to the large systems and the reason being is these systems spin more frequently and it generates less of a shadow and is a much smaller blade. He stated the large systems with each blade being about 80 feet and spinning with a slower rotation it can cast a perceptible flicker if it you have the right angle of the sun. He stated typically they way they deal with ordinances is they put a clause in that if it within a certain distance they have to provide information regarding the azimuth of the sun and what the shadow flicker would be. He stated as the earth is curved that disappears within a 100 feet of the system. He stated with a small turbine you may encounter that if you have a shared system or one located closer to an apartment complex or something of that matter.

Larry Willis stated we get a lot of freezing rain in this area and he asked if they how the ice effect the propeller. He also asked if the ice causes an imbalance.

Mr. Burkhardt stated ice usually stops the propeller from spinning and what usually happens is the sun heats up the ice and it drops straight down and it usually doesn't start spinning until most of the ice has melted. He added it is his understanding the propellers have to be perfectly balanced in order to spin. He added some people are concerned about the ice and they talked to some planners out west where they dealt with these systems a lot longer and they were told they don't really through ice or anything like that, they just don't spin when they are icy.

Larry Willis stated he is concerned about ice falling off it and someone being in the yard to which Mr. Burkhardt again stated the ice typically drops straight down just like it would off an antenna. He stated potentially do have to look up when you are underneath one because there is a potential of ice falling just like there is off your gutters of the house.

Mr. Burkhardt stated they have typically found they are not really an attractive nuisance and the industry typically doesn't like them being fenced in but some ordinances require it. He stated cell towers have a lot of high voltage equipment sitting at the base of it but the turbines do not. He commented usually building codes require it to have a manual disconnect at the base. He stated ordinance will typically talk about placing "No Trespassing" or "Caution" or "Danger" signs to help with the attractive nuisance issue. He added these types of systems are also grounded to be able to protect the electronics from lightening strikes.

Mr. Burkhardt usually the utilities companies require the systems to automatically shut down in the event of a grid failure so if a lineman needs to repair a line the system won't be pumping electricity into the system and potentially electrifying part of the grid. He stated the utilities will have regulations that will have to be followed to allow them to tie into the grid system. He stated they way they typically write an ordinance is that they obtain a sign off from the utility company.

Art Noffsinger stated so if you have a system and everyone is out of power you are out of power too.

Mr. Burkhardt stated the turbine would have to be disconnected from the grid but that doesn't mean it isn't connected to the house's power. He stated he thinks that would be depended upon how the disconnect was designed. He stated he doesn't know the intricacies on how they are tied in.

Mr. Burkhardt stated an issue you may run into is someone wanting to put a VAWT on the roof, especially on commercial structures. He stated a lot of times they will have to work closely with an engineer when doing that because they do generate vibrations and most structures are going to transmit that vibration through the structure so they may be really creating a nuisance for themselves. He stated they may want to consider not allowing that or want to require having a structural engineer to certify that beforehand.

Mr. Burkhardt stated some communities deal with like a garage or an accessory use. He stated you can outright create them as a permitted use but the only time they have done that is with the large wind systems is in a county where they felt it was okay. He stated in most cases they have dealt with them as Special Exceptions and that way you have a ministerial action that has to take place so you can provide the extra sign offs that they need and basically as long as they meet those sign off requirements they have to be approved. He stated that kind of gets you out of the responsibilities of the political issues of approving or not approving since basically you have to approve a Special Exception if they meet the criteria but it allows you to establish the criteria that have to be met. He stated a lot of the utilities are going to have that grid inter connection guidelines that will have to be met so you may want to work to see if they have established those. He stated typically with the application they require a proposed location and them submitting the type of system they are installing and providing blue prints as to the type of foundation and/or an engineer sign off.

Mr. Burkhardt stated this is a lot of background information but the industry says five kilowatts is what most American families would need. He added the cost of the towers is about \$3000 per kilowatt but the costs are beginning to fall. He asked for questions.

Attorney Doll asked what services American Structurepoint provides.

Mr. Burkhardt stated they are a full service architectural and engineering company. He stated he is the principal over the Planning and Urban Design Department and they do everything from Comprehensive Plans, Economic Development Plans and redevelopment planning.

Attorney Doll asked if they provided a ordinance for Warrick County what the typical price range would that be for drafting an ordinance dealing with residential wind turbines.

Mr. Burkhardt stated if they were looking at just doing a small residential wind turbine and incorporating it into the existing ordinance, depending on if they were looking without getting into performance standards or a lot of additional construction requirements it could be around anything between \$10,000 to

\$15,000. He stated it could be less based upon how easy it is to integrate into the ordinance or it could be more if there is some additional clean up required.

Attorney Doll asked if he has written wind turbine ordinances for any other communities in Indiana.

Mr. Burkhardt stated they have and the most recent one for Putnam County and that one is currently being adopted and they completely redrafted the entire ordinance and subdivision structure.

Attorney Doll stated he would like to add to the Board they argued the wind turbine case on September 9, 2009, before Judge Meier. He stated they have been sued for granting a Variance for permitting a 60 foot high wind turbine in a subdivision adjacent to the Ohio River. He stated the neighbors have sued alleging is negatively affecting their property values. He stated this was approved as an accessory structure and they don't have anything in the ordinance to define green energy devices and so the BZA approved a Variance to grant an additional 20 feet above the height requirements. He stated the BZA was sued for approving the Variance and the Commissioners have been sued for Declaratory Judgment that the Warrick County Zoning Ordinance by its silence does not permit a wind turbine to be built anywhere. He stated we don't define accessory structures in the ordinance – they can't because everyone has a different idea of what an accessory structure is. Attorney Doll stated at the conclusion of the argument, Judge Meier took it under advisement and his ruling is due any day. He added he took a few minutes to philosophize about the issue and said everyone is concerned about energy costs and the environment and he felt the technology has surpassed the law and the ordinance is already out of date and he regrets the Court was having to decide an issue the elected legislative body of the County should have to address. He stated they don't know what the decision will be but he was clearly asking them to ask the Commissioners to deal with this subject.

Mrs. Rector stated she sees now after listening to him where they need the different commitments and it should be a separate use like the cell tower and set up with its own guidelines. She stated she can see where it should have the setback requirements and should go to a public hearing.

Discussion ensued that these will become prevalent because the technology is getting less and less expensive. It was also discussed they should look into drafting an ordinance.

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Art Noffsinger commented that he feels the name of Minor Subdivision should be renamed because when people see the name subdivision they think it is larger than it is. After considerable discussion he made a motion to draft an ordinance to change the name of Minor Subdivisions to Limited Land Divisions and change the name of Major Subdivisions to just Subdivisions. The motion was seconded by Tony Curtis and unanimously carried.

Being no other business the meeting adjourned at 8:30 pm.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director